IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

MFA.No. 1263 of 2000(B)

O.P(MV).NO.3603/1993 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA DTD. 27/05/2000.
.....

APPELLANTS/PETITIONERS:
----

1. **INDIRA BAI RAM RAO GAYAK WARD,**
   T.T.R. COMPOUND, MAIN ROAD, KOLLAM.

2. **RAM RAO GOVIND GAYAK WARD,**
   T.T.R. COMPOUND, MAIN ROAD, KOLLAM.

3. **NANDA SITARAM SAIR, W/O. SITARAM SAIT,**
   T.T. COMPOUND, MAIN ROAD, KOLLAM.

4. **LEKSHMI SITARAM SAIT, D/O. SITARAM SAIT,**
   T.T.R. COMPOUND, MAIN ROAD, KOLLAM.

5. **VYSALI SITARAM SAIT, D/O. SITARAM SAIT,**
   AGED 17 YEARS, MINOR, T.T.R. COMPOUND,
   MAIN ROAD, KOLLAM.

6. **PRAVEEN SITARAM SAIT, S/O. SITARAM SAIT,**
   AGED 16 YEARS, MINOR, T.T.R. COMPOUND,
   MAIN ROAD, KOLLAM.

7. **PRATHEEP SITARAM SAIT, S/O. SITARAM SAIT,**
   AGED 14 YEARS, T.T.R. COMPOUND, MAIN ROAD, KOLLAM.

8. **VARSHA, D/O. SITARAM SAIT, AGED 6 YEARS,**
   T.T.R. COMPOUND MAIN ROAD, KOLLAM.

   (APPELLANTS 5 TO 8 ARE REPRESENTED BY THEIR MOTHER 3RD APPELLANT).

BY ADV. SRI.ANCHAL C.VIJAYAN.

prv.

M.F.A. NO. 1263/2000:

RESPONDENTS/RESPONDENTS:
----

1. **DAS, S/O. APPU, THIRUKULAM,**
   PALLIPURAM DESOM,
   POYYA VILLAGE, MALA.

2. **BRANCH MANAGER,**
   ORIENTAL INSURANCE COMPANY LTD.,
   KUNNAMKULAM.

BY ADV. SRI.MATHEWS JACOB (SR.).

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

prv.

J.B. KOSHY & V. GIRI, JJ.

M.F.A.No.1263 of 2000

Dated this the 7th day of August, 2007

Judgment

Koshy,J.

One Sitharam Sait, proprietor of al jewellery at Kollam and partner of a jewellery at Nilambur, while travelling in a car, along with his accountant, died due to injuries sustained in an accident on 16.8.1993 when his car was hit by a lorry driven by the first respondent. His father, mother, wife and five minor children filed application for compensation of Rs.15,00,000/-. Tribunal found that the accident occurred solely due to the negligence of the first respondent driver-cum-owner of the lorry and the above lorry was validly insured by the second respondent insurance company during the relevant period. But, total compensation awarded was only Rs.2,47,250/-. Only quantum of compensation is challenged in this appeal.

2. Deceased was aged 36 at the time of accident. Tribunal has taken 16 as the multiplier taking guidance from the second schedule. It was argued that considering the present life expectancy of the people and

that a businessman can conduct his business throughout his life as there is no retirement age, a higher multiplier should be taken. We see no ground to enhance the multiplier fixed by the tribunal. Deceased was engaged in the jewellery business. He was the proprietor of a jewellery and partner of another jewellery. According to PW1, wife of the deceased, he was getting a minimum of Rs.10,000/- per month. Ext.A7 showed that during 1993-94, he paid Rs.18,656/- as income tax. Ext.A8 is the income tax return for 1992-93. Ext.A9 issued by the Sales Tax Officer showed that he was a sales tax assessee for the year 1990-91 to 1993-94. Ext.A24 is the attested photostat copy of page 33 of the cash book maintained in Vysali Jewellery wherein it is noted that Rs.3,13,816/- has been withdrawn by the deceased Sitaram Sait in cash on 15.8.1993. Ext.A23 is the income tax return of the widow after the death of the husband and total business gain before tax was only Rs.45,264/-. It shows that even though his widow was continuing with the business of the deceased, income was considerably reduced. In any event, apart from maintaining a large family with five small children, she has to do the business with the help of others. At the

time of the accident, fifth child was only in the womb and all children were minors. It was argued that all other jewelleries are flourishing and deceased being a talented businessman, his business also would have flourished several times. But, their business decreased. He was an income tax payee. He was having his own car and employees. In fact, the accident occurred while he was travelling in his own car with his accountant and the car was driven by a permanent driver employed by him. Tribunal fixed only Rs.1,000/- as loss of dependency. That is too low. We are of the opinion that at least Rs.3,000/- ought to have been fixed as loss of dependency for the death of a shrewed and successful jewellery businessman even though Rs.10,000/- claimed as monthly income was not excessive. We also note that future prospects also is a matter to be considered. We are taking a low dependency income as family was continuing to get some income from the business. Even loss of the widow and minor children cannot be estimated in money. If that be so, compensation payable for loss of dependency will be Rs.3000 x 12 x 16 = Rs.5,76,000/-. After deducting Rs.1,92,000/- awarded by the tribunal as compensation for loss of dependency, balance compensation

payable will be Rs.3,84,000/-. Even though it was argued that only Rs.5,000/- was awarded for loss of estate and compensation awarded for loss of consortium, love and affection and treatment expenses etc. are very low, considering the total amount granted we are not granting any further enhancement on the compensation granted under other heads. The additional amount of Rs.3,84,000/- should be deposited by the second respondent insurance company with 7% interest from the date of application till its deposit.

Appeal allowed partly.

J.B.KOSHY
JUDGE

V. GIRI
JUDGE

vaa

J.B. KOSHY AND
V.GIRI,JJ.

M.F.A.NO.1263/2000

Judgment

Dated:7th AUGUST, 2007